UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM & CLORAZEPATE ANTITRUST LITIGATION	MDL Docket No. 1290 (TFH) Misc. No. 99ms276 (TFH)
This Order applies to: STATE OF CONNECTICUT, et al., Plaintiffs, v. MYLAN LABORATORIES, INC. et al., Defendants.	Civ. No. 98-3115 (TFH)
FEDERAL TRADE COMMISSION, Plaintiff, v. MYLAN LABORATORIES, INC. et al., Defendants.	Civ. No. 98-3114 (TFH)

ORDER Re: Settlement Appeal

Pending before the Court is a motion for an order re-opening the time to file an appeal for a period of fourteen days by class members/objectors Cathy Shirley, Ronald Weintraub, and Lillie Mae Boone ("Objectors"). Upon careful consideration of the motion, the joint opposition filed by the States and Federal Trade Commission ("FTC"), the opposition filed by the State Purchaser Plaintiffs, and the entire record herein, it is hereby

ORDERED that Objectors' motion for an order re-opening the time to file an appeal [#257] is **DENIED**.

On June 24, 2002, Objectors filed the instant motion as part of their desire to appeal this Court's Order and Final Judgments (and accompanying Memorandum Opinion Re: Settlement) of February 1, 2002, granting final approval of the settlements in these actions. In support of their motion, Objectors rely upon Federal Rule of Appellate Procedure 4(a)(6), which allows a district court to "reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied":

> (A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;
> (B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and
> (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6).

Although the first requirement of Rule 4(a)(6) appears to be satisfied here, Objectors have failed to discharge their burden with respect to the remaining requirements. In conclusory fashion, Objectors assert that they were "entitled to notice of the entry of the judgment in this matter sought to be appealed," but did not receive notice from the Clerk of the Court. Objectors' Mot. at 2 ¶ 3. But the Court can find no support for Objectors' contention. To the contrary, as pointed out by the FTC and States, the Court denied Objectors' motion to intervene in this action on October 10, 2001. See 10/10/01 Or. And Federal Rule of Civil Procedure 5(a), which governs the required service of orders, states that "every order required by its terms to be served . . . shall be served upon each of the parties." Fed. R. Civ. P. 5(a). Because Objectors were not

parties, service of the orders at issue here was not required. The Court therefore cannot find "that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed" as required by Rule 4(a)(6). Fed. R. App. P. 4(a)(6).

Nor can the Court find that "no party would be prejudiced." Fed. R. App. P. 4(a)(6). In sweeping language and without any further explanation, Objectors contend that "[n]o party to this litigation will be prejudiced by the granting of this motion." Objectors' Mot. at 2 ¶ 5. But their position conspicuously ignores the fact that over two months ago, the plaintiffs moved for and received an order from this Court authorizing distribution of over $42 million in refunds to consumers. See 5/28/02 Distribution Or.; see also FTC/States' Opp'n at 5 (detailing distribution by the administrator). The resulting prejudice is clear: the parties cannot feasibly recall distributed monies to individual consumers and state agencies.

SO ORDERED.

August 9th, 2002

Thomas F. Hogan
Chief Judge